IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.349 OF 2002

Shri Evaristo Remedios Sequeira, s/o Manuelin Sequeira alias Manuel Sequeira, aged about 63 years, pensioner, residing at Baina,Vasco Da Gama..... PETITIONER

Versus

1. Smt. Carmen Tereza Conceicao e Furtado, major, married, housewife, residing at H.No. 36, Baina, Vasco Da Gama,Goa.;

2. Peter Furtado, s/o Santan Furtado, major, residing at Baina, Vasco Da Gama;

3. The Inquiry Officer, City Survey, Vasco Da Gama;

4. Elisbao Pereira and his wife

5. Maria Rayon Pereira, both r/o Pereira House, Mangor Hill, Vasco Da Gama;

6. Addl. Civil Judge, Senior Division, Vasco Da Gama ..... RESPONDENTS

Mr. V.R. Tamba and Mr. A.J. Fernandes, Advocates for the Petitioner.

Mr. R.G. Ramani, Advocate for the Respondent No.2.

Mr. H.D. Naik, Addl. Government Advocate for the Respondent No.3.

CORAM : P.V. KAKADE,J.

DATED : DECEMBER 5, 2002

ORAL JUDGMENT

Rule. Rule made returnable forthwith by consent.

Heard the learned Counsel for the Petitioner as well as the Respondents.

2. The Petitioner has come with a case that he was denied the opportunity to cross-examine the witness in the course of the suit and could not gather the antecedents of the witness because the Affidavit of the witness was provided to the Counsel of the Petitioner on that very day and hence there is gross failure of justice when the learned trial Judge denied the opportunity to him to cross-examine on the next day by adjourning the matter by one day. In view of this position, the Order dated 8-10-2002 is sought to be set aside.

3. After hearing all the parties, I am satisfied that it is not in dispute that the Affidavit of the witness was provided to the party on that very day and the Counsel of the Petitioner was expected to cross-examine the witness on the basis of the said Affidavit. The grounds mentioned by the

learned trial Judge denying the request of the Petitioner to adjourn the matter to at least one day appear to be insufficient. In my considered view, though it is true that the suit was expedited matter, grant of one day's time would not have presented any difficulty for the learned trial Judge to adjudicate the dispute as per the directions of the superior Court, expeditiously. In other words, rejection of the Petitioner's application for adjournment for one day has resulted in failure of justice and, therefore, without further elaboration, I am inclined to allow the Petition.

4. Hence the Petition is hereby allowed. The impugned Order stands set aside. Rule is made absolute. Both the parties are directed to appear before the learned trial Judge on 16th December,2002 at 10.30 A.M. to get the next date fixed for the purpose of further proceedings.

Authenticated copy is allowed.

P.V. KAKADE,J.

ac.